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19 June 2002

Arthur Baggett, Jr., Chair and Hearing Officer
State Water Resources Control Board
1001 I Street, 25th Floor
Sacramento, CA 95814

Re: IID-SDCWA Petition for Long Term Transfer;
Request for deferral of briefing

To the Hearing Officer:

The County of Imperial respectfully requests that the hearing and briefing schedule confirmed in the Hearing Officer's letter of 14 June 2002 be modified in one respect: to defer the briefing now due 3 July 2002 until the close of all hearings in this proceeding.

This request is founded in two circumstances: the extraordinary demands facing the interested parties in proceedings outside the State Board between now and 3 July; and the inherent connection between the environmental documentation and merits of this proceeding. By deferring the briefing to a date beyond 16 July, the State Board can accommodate both of these considerations and not prejudice its own consideration of the case should it prove ripe for such consideration.

Imperial invites the Hearing Officer's attention to the following circumstances. Notwithstanding the stated intention of the Imperial Irrigation District (IID) to consider the final EIS/EIR for certification on 25 June 2002, certification will not take place on that date. For that to have happened, IID and the Bureau of Reclamation would have needed to complete and circulate responses in their EIS/EIR by 15 June. That did not take place. Only on 18 June, according to IID, did IID distribute to each public agency the responses to comments of that individual agency, and notwithstanding the request of Imperial for receipt of the complete final EIR (including responses to all comments, such as those of this State Board and the U.S. Environmental Protection Agency), to date neither IID nor the Bureau

of Reclamation have made the complete final EIS/EIR available.

IID has scheduled a public meeting to certify the EIS/EIR on 28 June 2002. Until that meeting, for which Imperial must obviously prepare to the best of its ability and notwithstanding the present denial of access to the final EIS/EIR, the status of the EIS/EIR will not be known. Until Imperial is able to review a copy of the entire final EIS/EIR, it cannot be certain to maintain its present position that the document must be recirculated in draft form because of the presence of substantial new information in that document.

The fact remains that the status of the EIS/EIR will not be known until 28 June, yet in advance of that date Imperial and other interested parties to this proceeding will need to devote substantial time to the lead agency's certification, as required by the California Environmental Quality Act (CEQA).

This premise alone imposes a substantial burden on Imperial and other interested parties to produce their final briefs but three working days later, 3 July.

Yet additional substantial proceedings related to this transfer are taking place in the Legislature. In response to initiatives that the long-term transfer be modified to include land fallowing that is not presently a customary and normal practice in the Imperial Valley, the State Legislature has conducted and is continuing to conduct a series of hearings and meetings concerning Senate Bill 482. That bill is scheduled for final hearing on the (apparent) last eligible date, 25 June 2002. Most of the protestants and other interested parties to the present State Board proceeding have participated with Imperial in the several hearings and meetings conducted within the last ten days on this measure, with further preparations and participation necessary up to and including 25 June.

This circumstance also imposes a substantial burden on Imperial and the other interested parties to produce concurrently their final briefs one week later, 3 July.

Finally, the presently-unknown contents of the final EIS/EIR, and presently-unknown viability of Senate Bill 482, should and will substantially influence the final positions and briefings of the interested parties to this proceeding. Thus, not only are all of us constrained by time to produce worthy briefs by 3 July, we are fundamentally asked to write from an inchoate record.

Despite the circumstances just recited, and the prejudice that some of them impose on the legal rights of Imperial and other participants, Imperial does not want to ask this Board or Hearing Officer to modify the hearing schedule that it has carefully established and on which the interested parties have relied.

Imperial therefore believes that the minimum relief appropriate and necessary, and least intrusive to the State Board and the interested parties, lies in maintenance of the Board's hearing schedule, but also extension of its briefing schedule to await the completion of all the hearings and evidence in these proceedings, including most crucially the final EIS/EIR if certified. Requiring each participant to produce a single brief at the conclusion of that record will honor the inherent unity of the substance and environmental assessment

in these proceedings; and should the EIS/EIR not be certified, conserve the resources of the parties and this Board in the event the case proves not ripe for consideration.

Imperial presents this request to the Hearing Officer immediately upon learning yesterday afternoon at the close of business of the scheduled intentions of IID, and trustfully in time for the State Board and its staff to consider at their executive session of 20 June. We appreciate the Hearing Officer's and State Board's consideration of this request.

Respectfully submitted,

Special Counsel to the County of Imperial

cc: Member Richard Katz
Member Gary Carlton
Mr. Tom Peltier
Mr. Andy Fecko
Ms. Dana Differding